THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 19872 OF 1997

Date: 03.12.2007

Between:

The Executive Engineer, Panchayat Raj Department, KovvurDivision, Kovvur, W.G.Dist. and another.

... Petitioners.

And

The Labour Court-cum-Industrial Tribunal, Guntur and another.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 19872 OF 1997

ORDER:

Aggrieved by the award of the Labour Court, in I.D. No. 493 of 1991 dated 19.06.1996, the present writ petition is filed.

Questioning his termination, as being effected in violation of Section 25-F of the Industrial Disputes Act, the second respondent-workman approached the Labour Court, Guntur. The Labour Court, Guntur, taking into consideration the evidence of M.W-1, the Junior Assistant in the office of the Executive Engineer, Panchayat Raj Department, that the second respondent-workman had worked from 03.07.1985 to 30.08.1985 at Penumantra Panchayat Samithi, from 30.10.1985 to 27.01.1986 in Panchayat Raj Section, Penumantra, again from 01.02.1986 to 01.05.1986 in Panchayat Raj Department in Penumantra and from 04.05.1986 to 01.08.1986 in Panchayat Raj Section, Penumantra held that, since indisputably the workman had put in more than 240 days of service in the 12 month period preceding his termination, he was entitled to be reinstated into service. Considering the delay of six years, in invoking its jurisdiction, the labour Court denied

half back wages and, accordingly, an Award was passed directing reinstatement of the respondent into service with continuity of service and with half back wages.

Learned Government Pleader for Panchayat Raj would vehemently contend that, since appointment of the second respondent was contrary to the Rules, the mere fact that he had worked for some time would not entitle him to be reinstated into service. Learned Government Pleader would contend that the Labour Court had not taken into consideration the inordinate delay of more than six years by the workman in invoking the jurisdiction of the Labour Court and, solely on the ground of latches, he should have been denied the relief sought for.

Even from the evidence of M.W-1 it is evident that the second respondent had put in more than 240 days of service in the twelve month period preceding his termination and, since admittedly the petitioner herein had not complied with the requirements of Section 25-F of the Industrial Disputes Act, such retrenchment is abinitio void. The Labour Court had, in view of the delay of six years, denied the workman half back wages. It is well settled that the Labour Court, on considering the delay on the part of the workman in invoking its jurisdiction, is entitled to mould the relief appropriately and, in as much as the workman has been denied half back wages, delay cannot now be urged as a ground to disentitle the second respondent-workmen of the relief of reinstatement. I do not see any reason to interfere with the Award in so far as reinstatement of the workman is concerned.

In so far as payment of half back wages is concerned, it is well settled that the Labour Court is required to apply its mind to several

factors, including whether the workman was employed elsewhere, the period for which he had worked earlier etc, while deciding whether back wages are required to be paid or not. Even when it decides to grant back wages, it is required to take these factors into consideration to decide as to whether back wages should be paid in full or in part. In the present case except to deny back wages on the ground of delay, the other factors enumerated in the judgment of the Supreme Court in **J.K. Synthetics Vs. K.P. Agarwal**[1] have not been considered. While affirming the Award of the Labour Court in so far as it had directed reinstatement of the workman, I consider it appropriate to remand the matter back to the Labour Court to examine the question of payment of half back wages with continuity of service, in the light of the factors enumerated in **J.K. Synthetics.** The entire exercise in this regard shall be completed within a period of four months from the date of receipt of this order.

The writ petition is disposed of accordingly.

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Date: 03.12.2007 RAMESH RANGANATHAN, J

MRKR

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[1] 2007(2) SCC 433